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In the Supreme Court of the United States

OCTOBER TERM, 1962

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT OR ORIGINAL COMPLAINT

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The United States of America moves the Court for leave to file in the above entitled cause its supplemental complaint against the State of California, submitted herewith.

Alternatively, if denied leave to file the attached pleading as a supplemental complaint, the United States moves the Court that the pleading be amended on its face by striking the word "Supplemental" from its caption and by assigning it a new docket number, and that it be filed as an original complaint, in which case the United States asks that it be deemed to be in the nature of a supplemental complaint.

This motion is made on the following grounds:

1. Following entry of the 1947 decree herein declaring the paramount rights of the United States in the bed of the three-mile marginal belt, supple-

mentary proceedings were begun for the purpose of identifying the base line which constitutes the landward boundary of the marginal belt, and from which its seaward boundary is measured.

2. Those proceedings were carried to the point where the issues were defined by the Court, hearings were held by a Special Master, his report was submitted to the Court, and both parties filed their exceptions thereto.

3. Although the effect of the 1947 decree was terminated by the Submerged Lands Act, which gave to the State of California the same submerged lands of the marginal belt that were the subject of the decree, the identification of the base line or landward boundary of the marginal belt still remains an active issue between the parties because it determines the location of the seaward boundary of that belt, which is the dividing line between the submerged lands retained by the United States and the submerged lands granted to the State of California by the Submerged Lands Act.

4. This issue of the identification of the landward boundary of the marginal belt is the same issue that was presented by the pending proceedings for entry of a supplemental decree to define more precisely the area described in the 1947 decree, and it can be resolved most expeditiously and conveniently by completing those proceedings.

5. A supplemental complaint is an appropriate means of bringing before the Court the new circumstances produced by the supervention of the Submerged Lands Act, which render the issue involved

in the supplementary proceedings material to a slightly different but closely related controversy between the parties, in such form as to permit its resolution by completion of those proceedings.

6. The controversy is an important one within the original jurisdiction of this Court, which the Court should entertain, if not on a supplemental complaint, then on an original complaint.

ARCHIBALD COX,
Solicitor General.

MARCH 1963.

MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF MOTION

JURISDICTION

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States and Title 28, United States Code, Section 1251(b)(2), on the ground that the suit is one to which a State is a party.

STATEMENT

In 1945 the United States began this suit to quiet its title to the bed of the marginal sea off the coast of California, and to enjoin the State of California, and persons claiming under it, from interfering therewith. The complaint described the area in suit as that "lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California." On October 27, 1947, this Court entered

its decree similarly describing the area, holding that the United States had paramount rights therein and full dominion and power thereover, and that the State of California had no title thereto or property interest therein. *United States* v. *California,* 332 U.S. 804, 805.

In its opinion, the Court rejected California's objection that the description of the area was too indefinite, holding that it was sufficient for a general determination of ownership and that, if necessary, subsequent hearings could be had to determine particular segments with greater definiteness. 332 U.S. 19, 25–26. The decree was specific in fixing the width of the marginal belt at three nautical miles, but it described only in general terms the base line from which that distance should be measured. The parties were in wide disagreement as to the way in which those general terms should be given specific application. The United States contended that the line of "ordinary low water" was the mean of all low waters (that is, both the higher low and lower low waters, which occur alternately each day along the west coast), whereas California though it meant only the mean of the lower low waters. Also, California thought that the line should be taken along the present, actual shore line, whereas the United States would exclude from consideration all artificial structures and artificial changes in the shore line. An even wider divergence existed in construing the term "inland waters." The United States limited this term to rivers, harbors within the limits actually sheltered by natural headlands and actually used for loading and

unloading vessels, and bays not over 10 miles wide at the entrance and of such shape as to have an area at least comparable to the area of a semicircle drawn on the line closing the entrance.[1] While recognizing that these restrictions were not applicable to bays over which domestic jurisdiction had been historically exercised, the United States denied that there were any such in California, other than bays meeting the described qualifications. California, on the other hand, claimed as inland waters many coastal identations of greater width, or of lesser area in relation to width of entrance, and also claimed as inland waters all the area between the mainland and off-lying islands. The latter claim took in a body of water extending seaward at some places as much as fifty miles from the nearest point on the mainland.

On January 29, 1948, the United States moved for entry of a supplemental decree more specifically defining three particular segments of the marginal belt. The State of California answered, alleging that the areas described in the government's petition were in the inland waters of the State rather than in the marginal belt. The State in turn asked for a supplemental decree defining the entire marginal belt. The Court referred the matter to a Special Master (334 U.S. 855) and after receiving his preliminary reports of May 31, 1949 (337 U.S. 952), and May 22, 1951 (341

[1] Instead of requiring direct equality with the area of such a semicircle, the United States advocated, as having certain practical advantages, the somewhat more complicated "Boggs formula," which led to substantially the same result. The formula was advanced only as a convenient technique, not as a rule of law; comparison with a semicircle is the basic principle.

U.S. 946), submitted to him the questions of whether seven specified water areas were inland waters or high seas, by what criteria and from what points the limits of the inland waters should be drawn, and how the ordinary low-water mark on the coast of California should be ascertained. 342 U.S. 891.

The Special Master held hearings at which he received evidence, briefs and oral argument. His report thereon, "Report of Special Master (Under Order of December 3, 1951)," dated October 14, 1952, recommended answers to the questions propounded by the Court. The report was received by the Court on November 10, 1952. 344 U.S. 872. In January 1953 both parties filed exceptions to the report. No further action has been taken in the case.

On May 22, 1953, the Submerged Lands Act was signed by the President and took effect. 67 Stat. 29, 43 U.S.C. 1301–1315. It gave to each coastal State the lands under navigable waters within its boundaries, limited, on the Pacific coast, to a distance of three geographical miles from the line of ordinary low water and from the outer limit of inland waters. In the case of California, this was in effect a grant of the precise area awarded to the United States by the 1947 decree herein. The parties remain in disagreement, as before, over the location of the line of ordinary low water and the outer limit of inland waters, with the result that there is a large area of submerged land claimed by the State of California as included in the grant made by the Submerged Lands Act and claimed by the United States as lying seaward of the area granted by that Act.

Much of the submerged land in the disputed area is believed to have substantial potential mineral value, and it is desirable that a program of exploration and development be begun there. The claims of the State of California cast a cloud on the title of the United States and will interfere with advantageous leasing by the United States. The purpose of this proceeding is to secure a judicial resolution of the controversy, so that orderly development may proceed.

ARGUMENT

1. *The present dispute between the parties involves the same legal and factual issues as were before the Special Master.*—The issue before the Special Master was the determination of the base line from which the government's three-mile belt was to be measured, along seven specified segments of the coast. Since the Submerged Lands Act awarded the three-mile belt to the State, there is no longer any dispute over the ownership of the belt; however, the controversy over the location of the base line that would determine the location of both the landward and seaward edges of the belt continues unabated, and the practical need for resolving that dispute is as great as before.

Landward of the three-mile belt are the tidelands and inland waters, the beds of which belong, at least in general, to the State or its grantees.[2] *Pollard* v.

[2] We do not mean to raise at this time questions as to particular parcels of tideland or land under inland water which may have been acquired or retained by the United States for particular purposes—for example, in front of naval bases or similar installations. It seems equally inappropriate at this time to go into particular circumstances which may have excepted particular portions of the three-mile belt itself from

Hagan, 3 How. 212. Seaward of the three-mile belt are the submerged lands of the continental shelf, which are subject to the exclusive jurisdiction and control of the United States. Presidential Proclamation No. 2667, Sept. 28, 1945, 59 Stat. 884; Submerged Lands Act, Sec. 9, 67 Stat. 32, 43 U.S.C. 1302; Outer Continental Shelf Lands Act, Sec. 3, 67 Stat. 462, 43 U.S.C. 1332. Until the marginal belt is located, it cannot be known which submerged lands are subject to federal and which to state control. Much of the area that was in dispute before the Special Master—namely, that part lying seaward of the three-mile belt as the United States identifies it—remains in dispute. The only differences between the substance of the controversy then and now are that the landward limit of the disputed area has been moved three miles seaward, and changing conditions now impel us to seek an adjudication as to the whole California coast instead of only certain segments. The determinative facts and principles remain wholly unchanged.

2. *A supplemental complaint is appropriate to bring the new circumstances before the Court.*—As a practical matter, it is highly desirable that the proceedings already had with respect to the government's petition for entry of a supplemental decree be carried to completion, with necessary modification to meet the changes caused by the Submerged Lands Act. To

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the general grant to the State, under Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. 1313. All such questions involve particular factual situations, wholly distinct from the general legal and factual issues involved in settling the location of the three-mile belt.

abandon them and begin new proceedings would result in much useless loss of time and duplication of effort. From the time the government's petition for entry of a supplemental decree was filed on January 29, 1948, until California's exceptions to the Special Master's final report were filed on January 9, 1953, was just three weeks short of five years. In that interval the Special Master made two preliminary reports, of May 31, 1949, and May 22, 1951, and in connection with his final report held ten days of hearings, five in Washington, D.C., and five in Los Angeles, California. At those hearings, testimony of 51 witnesses was received, as well as much documentary material. Transcripts of the hearings total 1,358 pages. Printed briefs aggregating 453 pages were filed, in addition to extensive typewritten memoranda. The Special Master's final report itself was 48 pages, and involved consideration not only of the materials presented to the Special Master but also of briefs and pleadings filed at earlier stages of the case, running to about 2,000 pages in all. The report was not completed until about four months after submission of the final brief before the Special Master. Clearly, these proceedings represent an investment of time, effort and money which should not be needlessly duplicated.

A supplemental complaint is appropriate, under Rule 15(d), F.R. Civ. P., to bring before the Court facts occurring after the filing of the original complaint. This may be done after, as well as before, entry of the decree. *Dugas* v. *American Surety Co.*, 300 U.S. 414, 428:

> Such a bill may be brought in a federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the qualification that the relief be not of a different kind or on a different principle. Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controversy.

As was said in *Osage Oil & Refining Co.* v. *Continental Oil Co.*, 34 F. 2d 585, 588 (C.A. 10):

> Where, by reason of events occurring subsequently to the decree, the further aid of the court is necessary to settle the rights of the parties and carry out the decree, a supplemental bill should be filed asking for an adjudication of the new issues and a decree to enforce the original decree.

The present case fits in this pattern. An event subsequent to the decree—namely, enactment of the Submerged Lands Act—has terminated the effectiveness of the 1947 decree as an appropriate instrument for settlement of the dispute between the parties, yet has left alive between the parties a major portion of that dispute, involving all the same legal principles and operative facts, and affecting largely the same area of submerged land. It is thus necessary to present a new pleading, as a new vehicle for continuing the surviving portion of the original dispute. The alternative, of commencing a new action, would raise anew the same legal and factual questions that have already been considered by the Special Master, and

with respect to much of the same area. Our proposed supplemental complaint will avoid this useless duplication by providing the necessary pleading to sustain, as an independent issue in the new situation created by the Submerged Lands Act, the question of location of the three-mile belt—a question which has heretofore appeared only as an implicit aspect of the title question but which has in fact survived the resolution of the title question by the Submerged Lands Act.

3. *If leave to file a supplemental complaint is denied, then the United States should be allowed to file its pleading as an original complaint.*—The filing of a supplemental complaint lies in the discretion of the Court. For the reasons discussed above, we believe that a sound exercise of that discretion will lead the Court to permit the filing of the supplemental complaint here. However, if the Court concludes, either as a matter of discretion or of law, that the case is not an appropriate one for the use of a supplemental complaint, then the United States must commence a new action. To save time, we ask in that eventuality that the pleading which we tender as a supplemental complaint be renumbered and filed as an original complaint. The case is within the original jurisdiction of this Court, as one to which a State is a party. Constitution of the United States, Art. III, Sec. 2, Cl. 2; 28 U.S.C. 1251(b)(2). The subject matter—relative state and federal rights in offshore submerged lands—is of great importance, as this Court has recognized by entertaining several prior suits on the same subject. *United States* v. *California,* 332 U.S. 19; *United States* v. *Louisiana,* 339 U.S. 699; *United States* v.

Texas, 339 U.S. 707; *United States* v. *Louisiana et al.,* 363 U.S. 1; *United States* v. *Florida,* 363 U.S. 121.

If the Court concludes that it is necessary for us to proceed by way of a new action, then we suggest that the complaint be treated as an "original complaint in the nature of a supplemental complaint," so as to permit advantage to be taken of proceedings already had in the pending case. By this means it may be possible to preserve, even in a new suit, much of the advantage of a supplemental complaint, including use of the Special Master's report. *Independent Coal Co.* v. *United States,* 274 U.S. 640; *Thompson* v. *Maxwell,* 95 U.S. 391; *Haarmann-De Laire-Schaffer Co.* v. *Leuders,* 135 Fed. 120 (C.C. S.D. N.Y.); Story, *Equity Pleading* (10th ed., 1892), Secs. 345–351b, pp. 333–344.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that it should be allowed to file the attached complaint as a supplemental complaint herein or, if that be denied, then to file it as an original complaint in the nature of a supplemental complaint.

ARCHIBALD COX,
Solicitor General.

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MARCH 1963.

In the Supreme Court of the United States

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No. 5, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

SUPPLEMENTAL COMPLAINT

The United States of America alleges as follows:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and Title 28, United States Code, Section 1251(b)(2).

II

On October 22, 1945, this Court allowed the United States to file its complaint against the State of California seeking to quiet its title to "the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California" and to enjoin the State of Cali-

fornia and persons claiming under it from continuing to trespass thereon in violation of the rights of the United States. *United States* v. *California,* 326 U.S. 688.

III

On October 27, 1947, this Court entered its decree in said cause as follows (332 U.S. 804, 805):

> 1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.
>
> 2. The United States is entitled to the injunctive relief prayed for in the complaint.
>
> 3. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

IV

Because of disagreement between the parties as to what was meant by the term "ordinary low-water mark" and as to what waters were inland waters, they were unable to agree as to what area was covered by the decree. To resolve this dispute, so far as it affected certain areas of immediate interest, the United States on January 29, 1948, moved this Court

for entry of a supplemental decree to describe with particularity three specified segments of the area covered by the decree. In response, the State of California alleged that the segments referred to were wholly or partly inland waters and not within the area covered by the decree, and that there were issues of fact involved in those questions and as to the location of the ordinary low-water mark. The State asked that the matter be referred to a Special Master to recommend a specific description of the entire area covered by the decree. The Court referred the case to a Special Master and, following his preliminary hearings and reports, directed him to hold hearings and recommend answers to the questions of whether seven specified water areas were inland waters or high seas, by what criteria and from what points the limits of the inland waters should be drawn, and how the ordinary low-water mark on the coast of California should be ascertained. 342 U.S. 891. After receiving evidence, oral arguments and briefs, the Special Master submitted his "Report of Special Master (Under Order of December 3, 1951)," recommending answers to those questions. The Court received the report on November 10, 1952. 344 U.S. 872. In January 1953 both parties filed exceptions to the report. No further action has been taken in the case.

V

On May 22, 1953, the Submerged Lands Act was approved by the President and took effect. 67 Stat. 29, 43 U.S.C. 1301–1315. By Section 3 of that Act, 43 U.S.C. 1311, the United States granted to the

State of California, with certain exceptions enumerated in Section 5 of said Act, 43 U.S.C. 1313, all the submerged lands along the coast of California, extending seaward to the state boundary but in no event extending more than three geographical miles seaward from the line of ordinary low water, where the shore is in direct contact with the open sea, or from the line marking the seaward limit of inland waters.

VI

On September 28, 1945, the President of the United States issued Proclamation No. 2667 which declared that "the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control." 59 Stat. 884.

VII

By Section 9 of the Submerged Lands Act, 43 U.S.C. 1302, the United States retained exclusive jurisdiction and control of the submerged lands of the continental shelf lying seaward of the area granted to the State of California.

VIII

The United States and the State of California remain in disagreement as to the meaning of the term "ordinary low-water mark" and as to what waters are inland waters, and therefore disagree as to what submerged lands were granted to the State by the

Submerged Lands Act and what submerged lands were reserved to the United States by that Act. This disagreement involves the same legal and factual questions that were submitted to the Special Master and as to which he reported his recommendations to the Court.

IX

As used in the decree of October 27, 1947, and in the Submerged Lands Act, the term "ordinary low-water mark" should be understood as meaning the line of mean low water; that is, the line where the average level of all low waters (including both the daily higher low water and the daily lower low water), as averaged over a period of 18.6 years, meets the shore of the mainland, an island, or a low-tide elevation any part of which extends within three geographical miles of the mainland or an island, as the shore may be modified at any time by gradual natural accretion, erosion or reliction or, if the shore has been artificially modified, where the average level of all low waters met the shore as it last was preceding such artificial modification.

X

As used in the decree of October 27, 1947, and in the Submerged Lands Act, "inland waters" should be understood as being:

(a) Rivers, each bounded seaward by a line, of whatever length, between the headlands at the line of mean low water;

(b) Bays, each bounded seaward by a closing line not exceeding 10 geographical miles in length, drawn

at mean low-water line between the headlands (or, if that distance exceeds 10 geographical miles, then within the bay so as to enclose the greatest amount of water possible with a line not exceeding 10 geographical miles in length), provided that the area of water, including islands therein, so enclosed is at least equal to the area of a semicircle having a diameter equal to the closing line; and

(c) Harbors, consisting of natural coastal indentations actually used by vessels as places to anchor or dock for the loading or unloading of passengers or freight, and in their natural state affording substantial shelter from wind and storm, each bounded seaward by a line delimiting the area actually so sheltered and so used;

Provided that where a bay or river lacks a pronounced headland, the headland is deemed to be the point where the mean low-water line on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the mean low-water line on the open coast meets a line projecting the general trend of the mean low-water line on the shore of the bay or river; and

Provided that where a bay has more than one entrance, the sum of the closing lines of the several entrances is taken as the closing line in applying the foregoing definitions.

XI

The submerged lands of the continental shelf, lying more than three geographical miles from the line of ordinary low water and from the outer limits of inland waters, as above defined, appertain to the United

States and are subject to its exclusive jurisdiction and control, and the State of California has no title thereto or right or interest therein.

XII

The State of California claims some right, title or interest in or to submerged lands or resources of the continental shelf described in Paragraph XI, but the exact extent of its claim is not known to the United States. The existence of this claim by the State of California casts a cloud on the rights of the United States and interferes with the effective exploration and development of the natural resources of the affected area by it or under its control, and thereby causes the United States great and irreparable injury for which it has no adequate remedy at law.

WHEREFORE the United States prays:

1. That the State of California be required to file its answer herein specifying the extent and nature of its claims in or to the submerged lands described in Paragraph XI;

2. That this Court rule on the exceptions heretofore filed to the "Report of Special Master (Under Order of December 3, 1951)," and take such other steps as it may deem appropriate to a determination of the respective claims of the United States and the State of California in and to the submerged lands of the continental shelf described in Paragraph XI;

3. That the Court enter its decree declaring that the submerged lands of the continental shelf described in Paragraph XI appertain to the United States and are subject to its exclusive jurisdiction and control, and

that the State of California has no title thereto or interest therein;

4. For such other and further relief as the Court may deem proper.

ARCHIBALD COX,
Solicitor General.

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